

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JERMAL RICHARD TOWLER,

Petitioner,

CASE NO. 2:07-cv-726
JUDGE GRAHAM
MAGISTRATE JUDGE KEMP

v.

MICHAEL SHEETS, Warden,

Respondent.

OPINION AND ORDER

On June 11, 2008, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 be dismissed. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. For the reasons that follow, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

Petitioner objects to all of the Magistrate Judge's recommendations, and again raises all of the same arguments that he previously presented. Petitioner again argues that the evidence was constitutionally insufficient to sustain his conviction on aggravated murder with a firearm specification because, *inter alia*, testimony of prosecution witnesses was not credible and because no one saw him fire the fatal shot. Petitioner again argues that Lamont Crenshaw was the actual killer. He asserts that the state appellate court's rejection of his claim of insufficiency of the evidence constituted an unreasonable determination of the facts. Additionally, as cause for his failure to submit copies of police reports containing

statements from Patricia Ann Palmer or Arthur Whitehead in support of his claim of ineffective assistance of counsel in state court proceedings, petitioner asserts that he was unable earlier to obtain such reports from the prosecutor or defense counsel. He has attached a copy of a petition for a writ of mandamus he filed in the state trial court to obtain such documents. *See Objections.*

Pursuant to 28 U.S.C. §636(b)(1) this Court had conducted a *de novo* review of the *Report and Recommendation*. For reasons detailed by the state appellate court and in the Magistrate Judge's *Report and Recommendation*, notwithstanding petitioner's arguments to the contrary, this Court likewise concludes that, when viewing all of the evidence in the light most favorable to the prosecution, *see Jackson v. Virginia*, 443 U.S. 307 (1979), the evidence was constitutionally sufficient to sustain petitioner's convictions. Further, even considering all of the documents submitted by petitioner in support of his claim of ineffective assistance of counsel, this Court likewise concludes that the record fails to reflect that petitioner can meet the two-prong test of *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

For these reasons and for reasons detailed in the Magistrate Judge's *Report and Recommendation*, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

IT IS SO ORDERED.

Date: August 26, 2008

S/ James L. Graham
JAMES L. GRAHAM
United States District Judge

